

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL JOHN IVANICS,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 207704

Wayne Circuit Court

LC No. 97-501763

Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and was sentenced to five years' probation with the first year to be served in the Wayne County Jail. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion in admitting photographs defendant took of the victim when she was a child because the evidence was used for the sole purpose of demonstrating defendant's poor character. Admissibility of evidence is generally a matter within the discretion of the trial court. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

Generally, use of prior bad acts evidence to show that a defendant acted in conformity therewith is prohibited. MRE 404(b). However, character evidence and evidence of bad acts are admissible if the evidence is offered for a proper purpose, is relevant, and its probative value is not substantially outweighed by its potential for unfair prejudice. *People v VanderVliet*, 444 Mich 52, 72; 408 NW2d 114 (1993). A proper purpose is one other than establishing the defendant's character to show his propensity to commit the crime charged. *Id.*

Here, the photographs were not used for the purpose of establishing his poor character. Rather, the evidence was relevant to the prosecution's theory of the case. Defendant was charged, *inter alia*, with two counts of second-degree criminal sexual conduct. Second-degree CSC requires sexual contact. MCL 750.520b; MSA 28.788(3); MCL 750.520c; MSA 28.788(3). Thus, the prosecution must show that the touching was done "for the purpose of sexual arousal or gratification." *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997).

To support the notion that defendant acted deliberately for the purpose of sexual arousal or gratification,, the prosecution sought to have the photographs admitted as evidence to show defendant's sexual interest in the victim. In addition, the photographs leant credibility to the victim's testimony. Both of these are proper purposes under MRE 404(b) to demonstrate some relevant, noncharacter theory. *VanderVliet, supra* at 72. Additionally, the probative value of the evidence far outweighed the potential for unfair prejudice. The photographs provided support for a necessary element to the charges for second-degree criminal sexual conduct and bolstered the victim's testimony. Further, defendant was given an opportunity to refute the suggestion that the photographs were sexual in nature. Defendant was also given the opportunity to introduce the albums in their entirety to show the jury the context in which the photos were taken and found. For these reasons, we conclude that the trial court did not abuse its discretion in admitting the evidence.

Defendant next argues that the trial court erred in denying his motion for a directed verdict because the only evidence presented was the victim's unreliable testimony. We disagree. In a CSC case, the victim's testimony is sufficient to establish the elements of the crime. The credibility of the victim's testimony is a matter for the trier of fact. *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998).

Finally, defendant contends that there was insufficient evidence presented at trial to support his convictions for two counts of second-degree criminal sexual conduct. We disagree. The victim's testimony regarding defendant's conduct with her was sufficient to allow a rational trier of fact to find that the elements of the crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Beard*, 171 Mich App 538, 541; 431 NW2d 232 (1988).

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald